#### **ESSAY EXAMINATION INSTRUCTIONS**

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines which are not pertinent to the solution of the problem.

You should answer the questions according to legal theories and principles of general application.

Computer, Inc. ("CI") is a well-known manufacturer of computer equipment. On January 3 CI received an order by fax for a CI computer with advanced internet capabilities from a newly formed company, Startup, Inc. ("Startup"). The order did not contain sufficient details for CI to determine exactly which model computer Startup wanted.

On June 5, Cl's order department sent a letter to Startup stating:

Received your order. However, we have over 16 different computer models; please review the enclosed catalog and fax us with the exact model number of the computer you want to purchase. We require payment in full, including shipping charges, before we will ship.

On June 8, CI received an order by mail from Startup stating, "Send us your model 100 with a Delta Operating System. Enclosed is our check for \$4,500." CI immediately shipped to Startup a model 100 computer, which, as stated in CI's catalog, came equipped with a Gamma Operating System, and cost \$7,000. Startup actually intended to order a CI model 10 computer, but it had made a typographical error on its June 8 order.

Upon discovering the error, CI billed Startup for an additional \$2,500, the difference between the \$4,500 Startup payment and the \$7,000 cost of the model 100. Startup refused to pay.

Startup has been unable to use the model 100, and CI refuses to take it back.

In a suit for breach of contract by CI against Startup to recover the \$2,500 differential, what defense might Startup reasonably assert, and who should prevail in the suit? Discuss.

Pete is a salesperson at XYZ Real Estate Company ("XYZ"). Vic owned a parcel of industrial real estate that he wanted to sell. Vic retained Pete as his agent to sell the parcel for him, and they agreed to list the parcel for a price of \$100,000. Developer contacted Pete and expressed interest in buying Vic's property.

Pete falsely told Vic that a soils test report revealed serious toxic contamination on the parcel and that, because of high cleanup costs, the most Vic could hope to get for the parcel was \$15,000 to \$17,000. Vic said, "OK. Do your best."

About a week later, Pete persuaded his friend, Frank, to sign an offer to Vic, offering to pay \$17,000 for the parcel. When Frank asked why Pete wanted him to do this, Vic told him, "The actual buyer is traveling in Europe and can't get back in time to sign the papers, so he authorized me to find someone to sign for him. I'm designating you as that person, but, don't worry, you won't be liable for anything." Believing Pete's explanation, Frank agreed to sign out of his friendship with Pete. Pete presented the offer signed by Frank, and Vic accepted it.

Pete, figuring he would temporarily "borrow" \$17,000 from XYZ, wrote a check on the XYZ bank account for \$17,000 and gave it to Frank to deposit into Frank's account. Frank attended the real estate closing, obtained the deed, and gave Vic his personal check for \$17,000. Two days later, Pete sold the property to Developer for \$100,000. From the proceeds of that sale, Pete returned the \$17,000 to XYZ's account and kept the balance for himself.

- 1. Of what crimes, if any, can Pete be convicted? Discuss.
- 2. With what crime might Frank be charged, and is it likely he would be convicted? Discuss.

During a severe thunderstorm, Alice sought shelter inside Walton Grocery Store ("Walton"). Alice slipped on a bunch of grapes that she failed to notice and that had fallen from a display near the entryway. After Alice's fall, witnesses described the grapes as "smashed," "flattened," "squished," and "gritty." The store manager told Alice that the area where Alice's fall occurred had been swept no more than 35 minutes before she fell. As a result of the fall, Alice suffered a broken arm and a broken ankle.

Later that same day Betty, while shopping in Walton, accepted an offer to sample a new product, "Mom's Whole Berry Pie," baked and distributed by Mom's Bakery, Inc. As she was chewing what she thought were blueberries, she bit down on a pebble the size of a blueberry and broke a tooth.

On what legal theories, if any, can Walton be held liable for personal injury to Alice and Betty? Discuss.

Upon completing his PhD studies, Cooper embarked on a nationwide search for a job as an instructor at various universities.

Cooper had an all-day interview on the campus of North University ("NU") in his home state, State A. At the conclusion of the interview, the dean of NU offered Cooper a position as a tenure-track assistant professor. Cooper accepted immediately, and the dean told him a written contract with details would be sent to him shortly.

Cooper received the written contract from NU, read it carefully, and confirmed that the position title, tenure-track status, salary, and courses to be taught were all in conformity with the oral agreement he and the NU dean had agreed upon. He signed the contract and returned it.

Several months before the beginning of the school year, the NU dean called Cooper and informed him that he had been assigned to the newly-opened State B campus of NU and that he would need to move to State B prior to the start of the September term. Cooper was unaware that NU had opened the new campus in State B. There had been no mention of the State B campus during his interview. The written contract that Cooper signed did not indicate at which campus he would be teaching.

Cooper refuses to move to State B, which is over 1,000 miles away from the State A campus.

Cooper sues NU for breach of contract, and NU cross-complains, alleging an implied term in the NU/Cooper contract that Cooper would teach at either of the NU campuses, seeking a decree of specific performance requiring Cooper to teach at the State B campus.

How should the court rule on:

- 1. Cooper's breach of contract claim? Discuss.
- 2. NU's request for specific performance? Discuss.